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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd April, 2025

No. 505036-HII(2)-2025/5287.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **96/2018** dated **14.02.2025** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ARUN PAL SINGH BISHT S/O LATE SH. GANGA SINGH BISHT R/O H.NO.119, SECTOR 1, PANCHKULA. (WORKMAN)

AND

M/S ASSOCIATED PRINTERS, PLOT NO. 1216, PRESS SITE, COLONY NO. 4, INDUSTRIAL AREA, PHASE -1, CHANDIGARH THROUGH ITS MANAGER/PROPRIETOR /OCCUPIER. (MANAGEMENT)

AWARD

1. Arun Pal Singh Bisht, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Machine-man by the M/s Associated Printers –management w.e.f. year 1997. Workman worked at the workshop continuously up to 10.10.2016. Last drawn monthly wages of the workman was ` 10,000/-. There was no complaint towards his job during tenure of his service. On 10.10.2016, when workman reported for duty, the respondent (*here-in-after 'management'*) refused to allow him duty and even to enter the premises of the management. Despite several verbal requests, workman was not allowed to join duty. After termination, the workman is totally unemployed. The management is still running its business. The management has strength approximately 20 employees but the management deliberately shown minimum strength of employees in the original records with the aim to deprive them from their legal rights under the labour laws and other liabilities. The management has kept the record away from the company. The management knowingly did not issue designation letter to the workman and co-workers. The management marks attendance in the exercise note book. The rate of wages, designation, machine-wise allotted job, production, working hours, over-time of

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employees, working days, leaves (without wages) and calculation wages etc. are recorded in simple note-book. Before making payment of wages to the employees, the management obtained their signatures on blank vouchers with revenue stamps and blank paper on wage register where no date has been mentioned. The management deduct ESI contribution from the wages of the workman and other employees but no receipt of deduction of ESI contribution has been given to the workman till date, which is violation of Payment of Wages Act and ESI Act. It is further averred that due to pre-determination, the management intentionally not issued appointment letter to the workman to conceal the date of appointment and service conditions and has not issued attendance card, wage slips and identity card to the workman and co-workers. The management never complied with the provisions of labour laws. On 10.10.2016, management refused to allow duty to the workman on the following grounds :-

- a. The management has not issued any memo, charge-sheet and no inquiry has been conducted before illegal termination.
- b. The management did not comply with the pre-conditions under Section 25-F of the ID Act. The management neither offered nor paid notice pay and compensation to the workman.
- c. The management did not issue advance notice to the workman. The job of workman exists as it is till date. Junior to the workman are still retained in service. The management did not assure re-employment to the workman at the time of termination of his services which is violation of Section 25-H of the ID Act and violation of principle of 'last come first go'.

It is further averred that following payments are due from the management to the workman.

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Notice pay according to Section 25 F of the ID Act	₹ 10,000.00
2.	Leave with wages which was not given (30 days)	₹ 10,000.00
3.	Minimum Bonus @ 8.33% from 01.01.2014 to 10.10.2016	₹ 25,600.00
4.	According to Section 4 of the Gratuity Act (19 years)	₹ 1,09,615.00
5.	Compensation according to Section 25F of the ID Act	₹ 95,000.00
6.	Over time 160 hours from the date 01.04.2016 to 10th October, 2016 under Section 59 of the Factory Act, 1948.	₹ 13,333.00
Total Amount :-		₹ 2,63,548.00

Rupees Two Lacs Sixty-three Thousand Five Hundred Forty-eight Only

It is further averred that the verbal order of termination of services of the workman is illegal, unjustified, malafide, violation of other provisions of the ID Act. Prayer is made that workman may be reinstated with continuity of service along with full back wages and other consequential benefits.

3. On notice, management contested the claim statement by filing written statement on dated 19.12.2019 wherein preliminary objections are raised on the ground that the workman-claimant (*here-in-after 'workman'*) despite being aware of the true facts and figures, has not approached this Court with clean hands and concealed the material facts, information and record. In fact, workman with a malafide intention and only to mislead this Court concealed the reply dated 27.03.2018 submitted before Assistant Labour Commissioner. The workman has now tried to improve his case after being cornered by the reply before the Assistant Labour Commissioner. Workman very conveniently wants to shift the onus of proof upon

the management which is against the basic principle of law that in the Court of Law one has to stand on its own legs. Workman was and is in specific knowledge of the fact that one of the co-owner of the property bearing Plot No.226, Industrial Area, Phase-I, Chandigarh, where the workman had been working, was facing litigation before the Estate Office, Chandigarh and on 19.10.2016, the said premises were sealed. However, the workman in a most clever manner has purposely concealed the said fact and has tried to demonstrate that he worked only up till October, 2016. The address has been purposely written wrong and on 10.10.2016 the said premises bearing Plot No.146, Press Site, Industrial Area, Phase-I, Chandigarh has been written as Plot No.1216, Press Site, Colony No.4, Industrial Area, Phase – I, Chandigarh. The workman very well knows that on 10.10.2016, the premises i.e. Plot No.146, Press Site, Industrial Area, Phase – I, Chandigarh was not in possession of the management and therefore his entire story is based on a lie that he was appointed and worked at Plot No.1216, Press Site, Colony No.4, Industrial Area, Phase – I, Chandigarh. The workman is trying to demonstrate that he has been kept as a slave and in the 19 years of service (as alleged by him), he has been sleeping over to the extent that he has not got any appointment letter, designation letter, attendance card and wage slips etc. etc. and has gone ahead to raise bogus allegation that management has taken signatures on blank vouchers with revenue stamps etc. etc. All the above averments are blatant lies. In fact, have been put in the mouth of the workman someone else. The workman is not a person with any mental or medical unfitness history and is absolutely due and diligent person. However, after having a golden handshake with the management, now wants to black-mail and extort moneys from the management. The workman is changing his facts and stand from time to time as per his convenience and by concealing material facts and documents. Workman raised the demand notice dated 29.01.2018, however, concealed the reply dated 27.03.2018 of the management and the subsequent demand notice by the workman dated 01.05.2018. A bare perusal of the same would clearly demonstrate that workman is changing his stand every now and then and is trying to improve his case by hook and crook. Initially, in demand notice dated 29.01.2018 the workman submitted that his services were terminated on 10.10.2016 but when he was confronted with the reply dated 27.03.2018 that premises were sealed on 19.10.2016 and despite the above, he was transferred money on 17.11.2016 and even thereafter different amounts were transferred till 12.01.2017, he changed his stand and created a new story that he kept on working till December, 2016 but now again in the claim statement he has taken the stand that he was terminated on 10.10.2016. It is further submitted that premises of management i.e. Plot No.226, Industrial Area, Phase – I, Chandigarh was sealed by the Estate Office on 19.10.2016 and the entire work came to a standstill. The management suffered huge loss and set back due to the same but for his courage supported his employees. The management allowed the workman to work outside and earn his livelihood and also further supported them right up till 12.01.2017 when a payment of ` 3,200/- was transferred through NEFT in the account of the workman. The management has virtually supported the workman, for almost three months after the forced closure of his unit occurred. The statement of account from the Bank demonstrating the various payments made to the workman. The management despite facing immense financial crunch, supported his employees to the best of his ability till the time he got a job somewhere else. The management had employed 8-9 employees for whom he got them registered with Employees State Insurance (ESI) also. As a goodwill gesture of the management towards the workman, the premium of ESI was paid right up till January, 2017 i.e. 3-4 months after the premises were sealed. The data of January, 2017 show the information given to ESI that the workman has left service. The management was trying to safeguard and extend all possible help to the workman till the time he got a new job. The workman got a job somewhere else in the month of January, 2017 and the management supported him and cleared all his outstanding due by paying him ` 10,700/- (` 7,500/- paid on 10.01.2017 and ` 3,200/- paid on 12.01.2017 by NEFT in his bank for which the statement of account of the bank is being relied upon. The workman is gainfully employed since then. The workman instead of supporting the management, further entangled the management by filing an application before the Assistant Labour Commissioner despite knowing all the ground reality. The workman categorically knew that the entire record had been sealed and the premises has been sealed by the Estate Office, Chandigarh. But still by concealing the said facts, initiated this litigation. The management duly submitted before the Assistant Labour Commissioner the entire factual matrix stating therein that the premises has been sealed on 19.10.2016 and since the entire record was under sealing, therefore, the documentation for full and final settlement could not be done. The

premises were de-sealed on 04.10.2018 and subsequently it transpired that the entire employment record has been destroyed due to rain and termite. The workman now taking benefit of the same has raised this issue. The premises of the management have been de-sealed and workman can start working again on fresh terms and conditions. In fact, one machine has not been brought into proper running and in case the workman is genuinely unemployed and wants to work, the modalities for the same can be worked out.

4. Further on merits, it is admitted to the extent of the name and address of the workman. The workman was an unskilled labourer, who was employed as a Helper and has gained the expertise of running a machine due to the trust and experience extended by the management. The workman be put to strict proof with regard to his appointment as Machine Man. The workman is a man of his whims and fancies and extremely irresponsible at that time. The management in fact verbally suggested many of its acquaintances to employ him so that he could earn his living. In addition to the above, the management also kept him on his rolls right up till January, 2017, when the workman himself informed the management that he has got a job somewhere else. Interestingly the workman after one year raised a demand notice despite being aware that the premises were still sealed as in January, 2018. The workman has been regularly taking holidays. It is denied as wrong that workman was working in Plot No. 1216, Press Site, Colony No.4, Industrial Area, Phase – I, Chandigarh. In fact these days no workmen sign any bond of minimum amount of time that they would work and therefore they are employed on contractual basis. However, in the case of workman, despite the forcible lockout of the premises, he was supported by the management for three months thereafter and it was only when the workman himself informed that he has been gainfully employed somewhere else and after the golden handshake, the management duly informed the ESI authorities that he has left services in February, 2017. The management duly maintains the record of ESI, but the entire original record has been destroyed due to lock out, however, the record available from the website of ESIC is attached. There is no violation of any Act. It is again stated that workman does not possess any educational qualification of skilled labour and hence, his grounds are baseless. There is no legal requirement to provide an appointment letter to the temporary employee. The workman was unskilled labourer. In fact, in the entire claim statement, the workman is trying to demonstrate that all the act and conduct of the management is illegal but interestingly does not disclose as to why was he a party to the alleged vague and ambiguous illegalities being done by the management. The workman is repeatedly levelling allegations of pre-determination and intentional act and conduct but very conveniently avoids to substantiate the said vague averments. Workman got his wages whenever directly into his bank account. The workman used to go on long leaves every year for a continuous period ranging from minimum 30 days to 60 days on the pretext of going to his village or native place. The workman used to take advance (in cash) for his holidays which in turn was later on adjusted in his salary. The workman was repeatedly caught red handed while purposefully mishandling the machines and slowing down the production knowing well that the work had to be completed before a particular time. Having forced the management to get the job completed, sometimes the workman did work overtime but was duly paid emoluments for the same. There is no unfair trade practice and the workman has failed to demonstrate that what stopped him in the last so many years to raise these bogus issues. The correct picture is that the workman had done a golden handshake and joined somewhere else. Thereafter in a well-planned conspiracy befriended the existing employees and when he came to know that the entire record has been destroyed due to the sealing, and the management does not have any backup data, the workman by abusing the process of law has initiated these proceedings. The workman was never punctual. He was neither a permanent or regular employee and there was repeated regular break in his employment after every 11 months for a period ranging from 30 days to 60 days. Hence the claim of the workman does not fall under Section of 25-B of ID Act. The workman was gainfully employed when he willfully and with his own desire left the management in January, 2017. The provision of Section 25-F of the ID Act is not attracted for the reason that (i) the business premises was shut down by the competent authority; and (ii) even after the same the management did support the workman for 3 months thereafter despite the fact that he had no source of income. It was the workman who willfully and for better prospect left the job / service with the management and now is trying to turn the table. The workman is trying to blow hot and cold in the same breath. On one hand, the workman raised all sorts of allegations of

pre-determined mind and illegal act and conduct but on the other hand claims the amounts in a specific manner as if he has all the record. The workman be put to strict proof as to how he calculated and on basis of which documents he has determined the amounts. The workman be called upon to explain that if he was “verbally terminated” on 10.10.2016, then he was receiving monies from the management on what account. The entire claim statement is bogus and smells malafide and the same should be dismissed with exemplary cost so that the sanctity of law is upheld and no person is permitted to abuse the process of law. Rest of the averments of claim statement are denied as false, vexatious, wrong and incorrect and prayer is made that claim statement may be rejected with exemplary costs.

5. Rejoinder not filed. From the pleadings of parties following issues were framed vide order dated 30.01.2022 and additional issue No.2 was framed vide order dated 17.11.2023 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the workman has not approached the Court with clean hands and concealed the material facts ? OPM
3. Relief.

6. Workman was directed to lead evidence first. In its evidence workman Arun Pal Singh examined himself as AW1 and tendered his affidavit Exhibit ‘AW-1/A’ along with copy of his ESI Card I.P. No.1708274231 vide Exhibit ‘W1’. It is pertinent to mention here that at the time of recording evidence, original of Exhibit ‘W1’ was produced which was seen and returned.

7. For corroboration workman examined AW2 Gurmeet Singh, Assistant O/o ESIC, Sector 29, Chandigarh who brought the summoned record in part and tendered attested copies of documents Exhibit ‘AW2/1’ to Exhibit ‘AW2/4’.

Exhibit ‘AW2/1’ is Form 01 relating to M/s Associated Printers, Plot No.226, New Industrial Area, Chandigarh.

Exhibit ‘AW2/2’ is ESIC Form C-11 regarding registration of Factory under ESI Act w.e.f. 07.02.1975.

Exhibit ‘AW2/3’ is Return of contributions under Employees’ State Insurance Corporation incorporating details of contribution for the period from October, 2009 to March, 2017.

Exhibit ‘AW2/4’ is Instriale Policy No.1708274231 (date of appointment 18.01.1995) relating to insured person Arun Pal Singh issued by Employees’ State Insurance Corporation.

8. On 30.08.2024, Learned Representative for the workman closed evidence in affirmative.

9. On the other hand, management examined MW1 Amit Jain – Partner M/s Associated Printers, Plot No.226, Phase-1, Industrial Area, Chandigarh who tendered his affidavit Exhibit ‘MW1/A’ along with copies of documents Exhibit ‘M1’ to Exhibit ‘M9’.

Exhibit ‘M1’ is order dated 17.10.2016 (bearing date of institution 17.02.2016) passed by SDM (East), exercising powers of Estate Officers, U.T. Chandigarh relating to show-cause notice under Rule 14 and 10 of the Chandigarh Estate Rules, 2007 read with Section 8-A of Capital of Punjab (Development & Regulation) Act, 1952 in respect of Plot No.226, Industrial Area, Phase-1, Chandigarh.

Exhibit ‘M2’ is letter dated 01.05.2018 addressed from Arun Pal Singh to Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh relating to the subject of demand notice.

Exhibit ‘M3’ is letter dated 27.03.2018 addressed from Associated Printers to Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh.

Exhibit ‘M4’ to Exhibit ‘M6’ are statements of bank account from 16.11.2016 to 18.11.2016, 15.12.2016 to 17.12.2016 and 09.01.2017 to 13.01.2017 of Account No.00000065025817067 maintained by Associated Printers with State Bank of India respectively.

Exhibit ‘M7’ is contribution history of 17000079460000803 for January 2017 of Employees State Insurance Corporation relating to Insured Persons namely Arun Pal Singh Bisht and Kuldeep Singh.

Exhibit ‘M8’ is order dated 13.10.2017 passed by the Division Bench of Hon’ble High Court in CWP No.23761 of 2017 titled as Smt. Veena Goyal & Others Versus Chandigarh Administration & Others.

Exhibit ‘M9’ is order dated 02.11.2018 passed by the Hon’ble High Court in COCP-3710-2017(O&M) titled as Smt. Veena Goyal & Others Versus Ajit Balaji Joshi, Deputy Commissioner-cum-Estate Officer, Union Territory, Estate Office, Chandigarh & Others.

10. Management examined MW2 Sukhwinder Singh – Data Entry Operator, Estate Office, Sector 17, Chandigarh who brought the summoned record in original and tendered copies of documents Exhibit ‘MW2/1’ to Exhibit MW2/7’.

Exhibit ‘MW2/1’ is copy of notice No.17682 dated 24.06.2009 under Section 15 of the Capital of Punjab (Development & Regulation) Act, 1952 issued from Assistant Estate Officer, U.T. Chandigarh to Sh. Kanwar Kumar & Others.

Exhibit ‘MW2/2’ is copy of order dated 18.02.2010 passed by Assistant Estate Officer.

Exhibit ‘MW2/3’ is copy of order dated 17.10.2016 passed by Sub-Divisional Magistrate (East) relating to show-cause notice under Rule 14 and Rule 10 of the Chandigarh Estate Rules, 2007 r/w Section 8-A of Capital of Punjab (Development & Regulation) Act, 1952 in respect of Plot No.226, Industrial Area, Phase-1, Chandigarh.

Exhibit ‘MW2/4’ is copy of letter bearing Memo No.270588/SDO(B)/IND-253 dated 03.08.2018 issued from The Chief Administrator, U. T. Chandigarh to Sh. Kanwar Kumar & Others in reference to their application to erect/re-erect/add to/alter building on Plot No.226, Industrial Area, Phase-1, Chandigarh.

Exhibit ‘MW2/5’ is copy of order dated 21.09.2018 passed by Sub-Divisional Magistrate (Central) whereby the site in question was ordered to be de-sealed subject to terms and conditions.

Exhibit ‘MW2/6’ is copy of letter bearing Memo No.279219-23 dated 01.10.2018 issued from SDO (Buildings) to M/s M. K. Wire Products (co-owner) & Others relating to the subject of de-sealing of Plot No.226, Industrial Area, Phase – I, U.T., Chandigarh in compliance of order dated 21.09.2018 passed by Sub-Divisional Magistrate (Central).

Exhibit ‘MW2/7’ is copy of report submitted by J.E. & SDO (B) to Sub-Divisional Magistrate (East), U.T., Chandigarh relating to Plot No.226, Industrial Area, Phase – I, Chandigarh (IND-253).

11. Management examined MW3 Raj Kumar – Senior Associate, State Bank of India, Main Branch, Sector 17, Chandigarh who brought the summoned record and tendered into evidence certified copy of statement of account No.00000065025817067 (last digit of the account is not shown as the statement has been requisitioned from Bellapur Branch, Mumbai and the statement generated in the system hides the last digit) for the period w.e.f. 02.11.2016 to 31.03.2017 vide **Exhibit ‘MW3/1’**.

12. On 29.01.2025, Learned Representative for the management closed oral evidence. On 07.02.2025, Learned Representative for the management closed documentary evidence.

13. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below;

Issues No. 1 & 2 :

14. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

15. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

16. In support of issue No.1, workman Arun Pal Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with document Exhibit 'W1'.

17. To prove that workman was covered under the ESI Scheme, workman examined AW2 Gurmeet Singh, Assistant O/o ESIC, Chandigarh who brought into evidence certified copies of documents i.e. Form 01 relating to M/s Associated Printers, Plot No.226, New Industrial Area, Chandigarh vide Exhibit 'AW2/1', ESIC Form C-11 regarding registration of Factory under ESI Act w.e.f. 07.02.1975 vide Exhibit 'AW2/2', Return of contributions under Employees' State Insurance Corporation incorporating details of contribution for the period from October, 2009 to March, 2017 vide Exhibit 'AW2/3' and Insurance Policy No.1708274231 (date of appointment 18.01.1995) relating to insured person Arun Pal Singh issued by Employees' State Insurance Corporation vide Exhibit 'AW2/4' and deposed the summoned record prior to September 2009 is not available in our office as the same has been weed out being old record.

18. On the other hand, to controvert the claim of the workman and in support of issue No.2, management examined MW1 Amit Jain – Partner M/s Associated Printers who vide his affidavit Exhibit 'MW1/A' deposed the material contents of the written statement which are not reproduced here to avoid repetition. MW1 supported his oral version with documents Exhibit 'M1' to Exhibit 'M9'. At the time of tendering documents Learned Representative for the workman objected to documents Exhibit 'M1' to Exhibit 'M7' on the ground of mode of proof and admissibility. The objection was kept open to be decided at the time of arguments. To my opinion, as far as document i.e. order dated 17.10.2016 / Exhibit 'M1' is concerned, the management got proved the same from summoned witness MW2 who brought the summoned record in original and placed on record copy of order dated 17.10.2016 vide Exhibit 'MW2/3'. As far as Exhibit 'M2' i.e. the demand notice dated 01.05.2018 raised by the workman before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh is concerned, the management relied upon the same as Annexure 'R2' at the time of filing written statement. As far as Exhibit 'M3' i.e. reply dated 27.03.2018 filed by Associated Printers before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh is concerned, the management relied upon the same as Annexure 'R1' at the time of filing written statement. Workman despite availing opportunity did not file replication to the written statement to deny the correctness of Annexure 'R1' and Annexure 'R2'. Thus, there is no reason to doubt the authenticity of documents Exhibit 'M2' and Exhibit 'M3'. As far as document Exhibit 'M4' to Exhibit 'M6' i.e. account statement from 16.11.2016 to 18.11.2016, 15.12.2016 to 17.12.2016 and 09.01.2017 to 13.01.2017 respectively of Associated Printers of their bank account No.00000065025817067 maintained with State Bank of India, are concerned, the management got the same proved as Exhibit 'MW3/1' by examining MW3 Raj Kumar – Senior Associate, State Bank of India, Main Branch, Sector 17, Chandigarh. As far as Exhibit 'M7' is concerned, the same is contribution history of ESI Account No.17000079460000803 for January, 2017 of Insured Person Arun Pal Singh Bisht (I.P. No.1708274231) and Kuldeep Singh (I.P. No.1713291627), workman himself got proved his ESI record vide Exhibit 'AW2/1' to Exhibit 'AW2/4'. The contention raised by Learned Representative for the workman that Arun Pal Singh Bisht shown at Sr. No.1 of Exhibit 'M7' has different identity from the workman whose name is Arun Pal Singh, is devoid of merits because the I.P. No. of Arun Pal Singh as proved by the workman vide his ESI Card / Exhibit 'W1' is 1708274231 and same is the I. P. No. of Arun Pal Singh Bisht as mentioned in Exhibit 'M7'. In Exhibit 'W1' as well as Exhibit 'M7' the name of the workman is mentioned as Arun Pal Singh Bisht whereas in the claim statement the workman has not mentioned surname along with his name. Thus, as per Exhibit 'W1' and Exhibit 'M7' the identity of the Insured Person Arun Pal Singh Bisht I. P. No.108274231 is same. In view of the reasons recorded above, the objection raised by the workman to the admissibility of documents Exhibit 'M1' to Exhibit 'M7' is over-ruled. Consequently, genuineness of documents Exhibit 'M1' to Exhibit 'M7' cannot be doubted.

19. Learned Representative for the management in order to prove the proceedings of sealing and de-sealing of the premises where the management was running its business of Associated Printers, referred testimony of MW2 Sukhwinder Singh – Data Entry Operator, Estate Office, Chandigarh who proved documents i.e. copy of notice No.17682 dated 24.06.2009 under Section 15 of the Capital of Punjab (Development & Regulation) Act, 1952 issued from Assistant Estate Officer, U. T. Chandigarh to Sh. Kanwar Kumar & Others vide Exhibit 'MW2/1', copy of order dated 18.02.2010 passed by Assistant Estate Officer vide Exhibit 'MW2/2', copy of order dated 17.10.2016 passed by Sub-Divisional Magistrate (East) relating to show-cause notice under Rule 14 and Rule 10 of the Chandigarh Estate Rules, 2007 r/w Section 8-A of Capital of Punjab (Development & Regulation) Act, 1952 in respect of Plot No.226, Industrial Area, Phase – I, Chandigarh vide Exhibit 'MW2/3', copy of letter bearing Memo No.270588/SDO(B)/IND-253 dated 03.08.2018 issued from The Chief Administrator, U.T. Chandigarh to Sh. Kanwar Kumar & Others in reference to their application to erect/re-erect/add to/alter building on Plot No.226, Industrial Area, Phase-1, Chandigarh vide Exhibit 'MW2/4', copy of order dated 21.09.2018 passed by Sub-Divisional Magistrate (Central) whereby the site in question was ordered to be de-sealed subject to terms and conditions vide Exhibit 'MW2/5', copy of letter bearing Memo No.279219-23 dated 01.10.2018 issued from SDO (Buildings) to M/s M.K. Wire Products (co-owner) & Others relating to the subject of de-sealing of Plot No.226, Industrial Area, Phase-1, U.T., Chandigarh in compliance of order dated 21.09.2018 passed by Sub-Divisional Magistrate (Central) vide Exhibit 'MW2/6', copy of report submitted by J.E. & SDO (B) to Sub-Divisional Magistrate (East), U. T., Chandigarh relating to Plot No.226, Industrial Area, Phase-1, Chandigarh (IND-253) vide Exhibit 'MW2/7'.

20. Learned Representative for the management in support of its plea that the management paid to the workman amount of ` 12,000/- through cheque No.852511 cleared on 17.11.2016, ` 5,000/- through cheque No.852551 cleared on 16.12.2016, ` 7500/- through NEFT on 10.01.2017 and ` 3200/- through NEFT on 12.01.2017, referred testimony of MW3 Raj Kumar, Senior Associate, SBI, Chandigarh who proved certified copy of statement of account No.00000065025817067 (last digit of the account is not shown as the statement has been requisitioned from Bellapur Branch, Mumbai and the statement generated in the system hides the last digit) for the period w.e.f. 02.11.2016 to 31.03.2017 vide Exhibit 'MW3/1', which reflects the above payments. However, it is neither pleaded nor proved that the above payments were towards retrenchment compensation.

21. From the oral as well as documentary evidence led by the parties, it comes out that workman was appointed as Machine-man by the management in the year 1991 and workman remained in continuous employment of management up to October, 2016.

22. Learned Representative for the workman argued that since the workman has completed continuous service from year 1991 up to October 2016, thus, workman is proved to have completed continuous service of 240 days in 12 calendar months preceding termination and fulfills the requirement of Section 25-B of the ID Act. It is further argued by Learned Representative for the workman that since workman's falls within the definition of 'continuous service', thus, the provision of Section 25-F of the ID Act is attracted which lays down certain conditions, the employer must satisfy before retrenchment of the services of the workman i.e.

- (i) the workman is given one month's notice- (a) in writing (b) indicating the reasons for retrenchment;
- (ii) the retrenchment must take effect after the expiry of period of notice i.e., one month or else, the workman should be paid in lieu of such notice, wages for the period of notice;
- (iii) at the time of retrenchment, the workman has been paid compensation, equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (iv) the notice in the prescribed manner is served on the appropriate government or such authority as may be satisfied.

23. It is further argued by Learned Representative for the workman that in this case, in October 2016, when the workman went to perform his normal duty, he was refused work by the management without assigning any reason and without notice. Neither prior notice was issued nor notice pay in lieu of notice period was paid nor retrenchment compensation was paid at the time of retrenchment of services. Besides, neither any memo nor any show-cause notice was issued / served upon the workman on account of any kind of misconduct nor any kind of domestic inquiry was held against the workman before terminating his services, thus, verbal order of termination of services of the workman is illegal. It is further argued by Learned Representative for the workman that alleged payment as shown in Exhibit 'MW3/1' is deficient in comparison to the retrenchment compensation under Section 25-F of the ID Act and gratuity under Section 4 of the Gratuity Act. In this regard, MW1 when put to cross-examination denied the suggestion as wrong that the alleged payment made to the workman is deficient in comparison to the retrenchment compensation under Section 25-F of the ID Act and gratuity under Section 4 of the Gratuity Act.

24. On the other hand, Learned Representative for the management argued that the present case is not a case of termination of services of the workman, thus, provision of Section 25-F of the ID Act is not attracted. In fact, the premises where the management was running its business i.e. Plot No.226, Industrial Area, Phase – I, Chandigarh was sealed by the Estate Office on 19.10.2016 in compliance with sealing order dated 17.10.2016 / Exhibit 'M1' and the entire work of Associated Printers came to a standstill. The management suffered huge loss and set back but despite that the management supported its employees including the workman. The management allowed the workman to work outside and earn his livelihood and supported his further right up to 12.01.2017 when payment of ₹ 3,200/- was made to him in his bank account through NEFT.

25. It is further argued by Learned Representative for the management that premises of the management company was sealed on 19.10.2016 as a result of which the entire business of the management was closed, resulting into automatic termination of services of its employees including workman. To such circumstances, proviso to Section 25-FFF of the ID Act is attracted. For better appreciation, Learned Representative for the management referred Section 25-FFF of ID Act which is reproduced as below :-

“25FFF. Compensation to workmen in case of closing down of undertakings.– (1)

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched :-

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F, shall not exceed his average pay for three months.

[Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or*
- (ii) accumulation of undisputed stocks; or*
- (iii) the expiry of the period of the lease or licence granted to it; or*
- (iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operation are carried on,*

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.].

[1(A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if—

- (a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;*
- (b) the service of the workman has not interrupted by such alternative employment; and*
- (c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.]*

[(1B) For the purposes of sub-sections (1) and (1A), the expressions “minerals” and “mining operations” shall have the meanings respectively assigned to them in clauses (a) and (b) section 3 of Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).]

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service] or any part thereof in excess of six months.]”

26. It is further argued by Learned Representative for the management that due to applicability of proviso to Section 25-FFF of the ID Act, the relationship of employer-employee between the management and workman ceased to exist. To support his arguments, Learned Representative for the management referred judgment of Hon’ble Supreme Court of India reported in (2007) 7 SCC 366 titled as ***District Red Cross Society Versus Babita Arora and Others***.

27. To my opinion, as far as service period of the workman is concerned, MW1 Amit Jain – Partner Associated Printers when put to cross-examination stated that he cannot comment whether workman remained in continuous employment of the management from year 1991 up to October, 2016. The above service period of the workman being not specifically denied by MW1, is deemed to be admitted. Even otherwise in this case on 06.12.2023 workman moved an application to issue direction to the Regional Director, ESI Chandigarh to produce the record of workman for the period 01.01.1997 to 10.10.2016. Management filed reply dated 03.04.2024 to the above-said application supported with sworn in affidavit of Amit Jain – Partner M/s Associated Printers. In the said affidavit it is submitted that the applicant has filed an application for direction to Regional Director, ESIC Office, Chandigarh, to produce records from 01.01.1997 to 10.10.2016 of workman / Arun Pal Singh ESIC No.1708274231 to prove his service period with the respondent. It is further submitted that respondent has not denied the service period of the workman. In view of the above, it is admitted fact of the management that workman remained in continuous employment of the management w.e.f. 01.01.1997 to 10.10.2016. MW1 in his cross-examination admitted as correct that last paid monthly salary of the workman was ₹ 10,000/-.

28. The argument raised by Learned Representative for the workman that in October, 2016, when workman went to join his normal duty, he was verbally refused work by the management without assigning any reason or notice, is devoid of merits because in this case the management has proved into evidence the demand notice dated 01.05.2018 / Exhibit 'M2' raised by the workman against the management before to Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, wherein workman alleged that he was in service of Associated Printers w.e.f. 1991. In October, 2016, after the closure of factory, the Associated Printers is carrying on work, in its own plot which is still going on as Associated Printers. Associated Printers terminated his services in December, 2016 all of a sudden, whereas he was in employment from the last 25-26 years. The above fact alleged in demand notice Exhibit 'M2' would support the plea of the management that it was well within the knowledge of the workman that his services were terminated due to closure of factory but the workman in the demand notice dated 29.01.2018 and in the present claim statement nowhere mentioned that his services were terminated on account of closure of factory. Mere fact that workman has not placed on record reply dated 27.03.2018 submitted by the management in proceedings before Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh and demand notice dated 01.05.2018 is not sufficient to presume that workman has concealed the material documents as an attempt to abuse the process of Court. Besides, in demand notice dated 01.05.2018 / Exhibit 'M2' the workman has alleged that his services were terminated all of a sudden in December, 2016, whereas in the demand notice forming basis of the present claim and in the statement of claim, workman has alleged that his services were terminated in October 2016. Both the above pleas taken by the workman being self-contradictory are destructive to each other.

29. Furthermore, the management's plea that its business was completely closed due to sealing of its premises stands proved from documents Exhibit 'MW2/1' and Exhibit 'MW2/2'. Exhibit 'MW2/1' is the notice under Section 15 of the Capital of Punjab (Development & Regulation) Act, 1952 bearing No.17682-AEO-cum-C.A/SDO(B)-Zone-I/IND-253 dated 24.06.2009 issued by Assistant Estate Officer to Sh. Kanwar Kumar, Jeevan Lata, Smt. Prem Lata and Sh. Mohan Singh (Occupiers) on the ground that in contravention to Section 15 of Capital of Punjab (Development & Regulation) Act, 1952 and read with Rule 5 of the Punjab Capital (Development & Regulation) Building Rules, 1952, they have raised the following unauthorized construction on plot No.226, phase-1, Industrial Area, Chandigarh.

1. Un-authorised opening made in show window towards Plot No.225, Industrial Area, Phase - I, Chandigarh.
2. The aluminum partitions exist at site in rear workshop at low height.
3. Open to sky covered with tin sheets in some portion.

30. After issuing the above notice, Assistant Estate Officer, U.T. Chandigarh passed order dated 18.02.2010 / Exhibit 'MW2/2'. The relevant portion of Exhibit 'MW2/2' is reproduced as below :-

"SDO(B) is directed to seal the part of building where violations exist and pointed out in the show Cause notice issued vide Memo No.17682/A.E.O-cum-C.A/SDO(B)Zone-I/IND-253 dated 24.6.2009 and submit compliance report immediately."

31. Further from order dated 17.10.20216 / Exhibit 'MW2/3' passed by Sub-Divisional Magistrate (East) exercising powers of Estate Officer, U.T. Chandigarh, it is proved that the tenants / occupiers of Plot No.226, Industrial Area, Phase-1, Chandigarh challenged the correctness of order dated 18.02.2010 in W.P. No.22319-2011 (O&M) which was disposed off vide order dated 09.12.2015 in the following terms :-

1. Order dated 18.02.2010, passed by the Assistant Estate Officer, Chandigarh, is set aside.
2. The matter shall be placed before the Estate Officer/Assistant Estate Officer, Chandigarh, exercising power with respect to premises, in dispute, who shall within a week

of receipt of a certified copy of this order, examine the violations pointed out by the Plan Approval Committee (Lower) and if deemed appropriate, issue a notice under Section 15 of the Act and under Rule 10 of the Rules to the allottees/lessees/occupiers, who shall file their response within ten days of receipt of the notice, if any. The Estate Officer/Assistant Estate Officer, Chandigarh, shall determine/decide the controversy, within fifteen days of receipt of the reply, if any, after affording an opportunity of hearing of all parties concerned and taking into consideration all relevant statutory provisions, legal rights and arguments etc.

3. The entire matter be concluded within two months of the issuance of the notice.

32. After receipt of above order of Hon'ble High Court, show-cause notice for dated 03.03.2016 was issued to the occupiers of Plot No.226, Industrial Area, Phase-1, Chandigarh. The inspection report was obtained and the following direction was issued :-

“The SDO (B) is directed again to go to the said site in question on 19.10.2016 and seal the sanctionable violations and demolish the non-sanctionable violations as mentioned in PAC (Lower) Report.

After the exercise, SDO(B) will submit the written report on 20.10.2016 regarding the violations which are sealed and the violations which are demolished as per the report of PAC (Lower).

Above orders shall be complied by SDO (B) and concerned officers, failing which strict disciplinary action will be initiated against the erring officer.”

33. In view of above order Exhibit ‘MW2/3’, it is made out that the premises where the management was running its business was sealed on 19.10.2016 as a result of which the business of Associated Printers-management was shut down. Since business of the management was shut down on 19.10.2016 due to sealing of its premises, thus, it is not believable that workman remained in employment of the management up to December 2016. Workman failed to explain where he worked during the period 19.10.2016 to December 2016 when the premises of the management was lying sealed. On the other hand, sealing of the premises of Associated Printers would prove that it resulted into automatic termination of the services of the workman on account of circumstances beyond its control. To the facts and circumstances of the case, the judgment referred by Learned Representative for the management reported in (2007) 7 SCC 366 (*supra*) is applicable to the facts of present case to an extent. The relevant para 10 to 17 are reproduced as below :-

“10. Section 25-FFF deals with compensation to workmen in case of closing down of undertakings. The relevant part of Sub-section (1) of Section 25-FFF (omitting the proviso) reads as under:

*“25FFF. Compensation to workmen in case of closing down of undertakings.-
(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:*

Provided”

Therefore, the legislature has treated closing down of undertakings which automatically result in termination of services of all workmen working therein differently from a retrenchment simpliciter as defined in Section 25F of the Act.

11. *In Workmen v. Indian Leaf Tobacco Development Co. Ltd. It was held as under (AIR p.860)*

“No Industrial Tribunal, even in a reference under Section 10(1)(d) can interfere with discretion exercised by a company in the matter of closing down some of its branches or depots. Even if such closure may not amount to closure of business of the Company, the Tribunal has no power to issue orders directing a Company to reopen a closed depot or branch, if the Company, in fact, closes it down and that closure is genuine and real. The closure may be treated as stoppage of part of the activity or business of the Company. Such stoppage of part of a business is an act of management which is entirely in the discretion of the Company carrying on the business.”

12. *In Hindustan Steel Ltd. v. Workmen it was held by this Court as under in para 10 of the Reports: (SCC p.750)*

“10. The word undertaking as used in Section 25-FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case.”

13. *In Workmen v. Straw Board Mfg. Co. Ltd., this Court laid down the test of closure of a unit by observing that the most important aspect in a case relating to closure is whether one unit has such componental relation that the closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrity will assume an added significance in the case of closure.*

14. *It appears that after the aforesaid decisions of the Supreme Court, the legislature by an amendment made in the year 1982 to the Industrial Disputes Act defined the word “closure” by adding Section 2(cc). Section 2(cc) of the Act reads as under:*

“2(cc). ‘closure’ means the permanent closing down of a place of employment or part thereof;”

15. *It is, therefore, clear that in order to attract Section 25-FFF it is not necessary that the entire establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25-FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal, it was held as under in para 21 of the report : (SCC p. 647)*

“21. How far and to what extent the provisions of Section 25-F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25-FFF of the 1947 Act leaves no manner of doubt that Section 25-F thereof is to apply only for the purpose of computation of compensation and for no other. The expression “as if”

used in Section 25FF and Section 25-FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25-F of the 1947 Act and not the other consequences flowing therefrom. Both Section 25FF and Section 25-FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose.”

16. The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25-FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25-FFF of the Act which has to be calculated in accordance with Section 25-F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25-F of the Act.

17. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25-FFF of the Act and the award of reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.”

34. Learned Representative for the workman argued that adverse inference shall be drawn against the management for non-production of the documents as sought by the workman vide its application dated 25.03.2022. To my opinion, the above argument advanced by Learned Representative for the workman is devoid of merits because the application dated 25.03.2022 filed by the workman seeking to summon the record from the possession of management was disposed off vide detailed order dated 21.04.2023. The relevant para 6 of order dated 21.04.2023 passed by this Court is as below :-

“6. The applicant-workman seeks to summon from the respondent-management the record i.e. (i) the prescribed recruitment / appointment process workman affiliation bye-laws amended up-to-date; (ii) the complete attendance register with incoming and outgoing entry of workman; (iii) the record of payment of monthly wages with working days; (iv) the personal file of the workman; (v) the ESI and PF records and (vi) record of CCTV footage from the year 2012 to March 2018. The respondent-management has not denied the fact that the record sought to be summoned by the applicant-workman was in possession of the management but has taken the plea that the premises of the management was sealed by the Estate Office on 09.10.2016 and de-sealed on 04.10.2018 and during the intervening period due to rain and termite the entire employment record has been

destroyed. With the aforesaid plea the respondent-management has show its inability to produce the record in question. Under the circumstances, the applicant-workman is at liberty to prove the said record by leading secondary evidence under Section 65 of The Indian Evidence Act, subject to just and legal exceptions."

35. The workman has not made any effort to prove the said record by leading secondary evidence under Section 65 of the Indian Evidence Act.

36. In view of the judgment **(2007) 7 SCC 366 (supra)**, the present case falls within the ambit of proviso to Section 25-FFF of the ID Act. On account of closure of the business of the management w.e.f. 19.10.2016 on account of unavoidable circumstances beyond the control of the employer-Associated Printers, the relationship of employer & employee between the management and workman ceased to exist and subsequent de-sealing of the premises on 04.10.2018 after period of about 2 years does not entitle the workman for seeking reinstatement.

37. Consequently, workman held entitled to compensation assessed under proviso to Section 25-FFF of the ID Act i.e. ` 10,000/- (one month salary) x 3 = ` 30,000/-.

38. Accordingly, issue No.1 is partly decided in favour of the workman and against the management. Issue No.2 is decided against the management and in favour of the workman.

Relief :

39. In the view of foregoing finding on the issues above, this industrial dispute is partly allowed. The workman is held entitled to compensation assessed under proviso to Section 25-FFF of the ID Act i.e. ` 10,000/- (one month salary) x 3 = ` 30,000/-. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 14.02.2025.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd April, 2025

No. 505040-HII(2)-2025/5289.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **84/2020** dated **11.02.2025** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JYOTI RANI W/O SANJEEV R/O FLAT NO. 1308/19, PHASE II, MOHALI. (WORKMAN)

AND

1. M/S INNOVISION PVT. LTD., SCO NO. 660, 3RD FLOOR, SECTOR 70, MOHALI.
2. SECY. TO MD/ AMD (G) HEAD OFFICE, MARKFED.
3. J.S.S. TO CM (P) MARKFED.
4. E.O. BOARD / EO (G) LIAISON OFFICER MARKFED.

ADDRESS NO. 2-4, PLOT NO. 4, SECTOR 35-B, CHANDIGARH. (MANAGEMENT)

AWARD

1. Jyoti Rani, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was working with the respondent (*here-in-after 'management'*) since 17.04.2017 and lastly got salary ` 21,863/- per month. On 13.07.2019 workman applied for maternity leave for 26 weeks from BOD Branch, Markfed Office Plot No.4, Sector 35-B, Chandigarh and the same was allowed by the managements. The managements did not allow the workman to do her job ever after giving the fitness certificate which is in violation of the Labour Law, Constitutional Law and the act of termination is against the law of the land which warrant action as per the law against the managements / employers. The workman discharged her duty with the managements/employer's office with entire satisfaction and there is no complaint against the workman from the managements / employers' side. Not allowing the workman to join her duties is deemed termination from service, which has caused mental agony and physical pain to the workman. Due to this reason the workman became patient of depression. The workman raised demand notice. The Assistant Labour Commissioner, Chandigarh referred the dispute to this Court vide order dated 26.08.2020. Prayer is made that the workman may be reinstated with full back wages along with other service benefits.

3. On notice, management No.1 contested the claim statement by filing written statement dated 01.07.2021, wherein preliminary submissions are made to the effect that claim statement under Section 2A of the ID Act is not maintainable as no notice from Assistant Labour Commissioner-cum-Conciliation Officer has been received by the answering respondent (*here-in-after 'management'*). More so, when the answering management is neither the employer of the workman, nor any claim has been raised against the answering management, thus, statement of claim is not maintainable. The answering management was assigned with a contract / agreement by management No.2 for the supply of the outsource workmen vide contract dated 31.10.2017. This contract includes the reference about providing outsourced staff as per the requirement of management No.2 from time to time. The management No.2 hired the services of the workman at their own

level as no appointment letter was issued by the answering management, rather the answering management was only a source for making payment to the workman which is remitted regularly to the answering management after having the monthly attendance from the answering management of the workman including the other workmen. As there is no employer-employee relationship between the answering management and workman, thus the workman has no claim whatsoever against the answering management. The management No.2 appointed another workman in the place of workman at their own level, when the workman moved an application for grant of maternity leave from the Branch of management No.2, where she was working. Thus, violation of Sections 25F, 25G and 25H of the ID Act, if any, has been made by management No.2.

4. Further on merits, it is admitted to the extent that workman was being paid wages after the receipt from the management No.2 as workman was employed through outsource by the management No.2. It is the management No.2 where the workman was working till she moved on maternity leave, as the same was sanctioned, if any, by management No.2 and not the answering management. No termination whatsoever was made by the answering management as the workman was working with the management No.2 and moved on maternity benefits after arranging permission, if any, from the management No.2. It is the management No.2 who did not allow her to join the duties after fitness certificate, as the workman never reported to the answering management, more so when the answering management was not the employer of the workman. Rest of the averments of claim statement are denied as wrong. It is specifically pleaded that there is no para No.5 of the claim statement. Prayer is made that reference qua the answering management may be dismissed.

5. Managements No.2 to 4 contested the statement of claim by filing joint written statement dated 16.04.2021 wherein preliminary submissions are made to the effect that the services of the workman were engaged through service provider M/s Innovision Pvt. Ltd. - management No.1. Since the services of the workman were engaged through a service-provider, answering managements are not the employer as far as the workman is concerned. Action whatsoever regarding replacing the services of the workman or otherwise is to be taken by the management No.1. Since answering managements are not the employer in respect of the workman, she has no claim whatsoever against the said managements. The workman has no cause of action against the answering managements and as such, the claim qua the answering managements deserves to be dismissed.

6. Further on merits, it is stated that workman was engaged through service provider (management No.1) and joined on 17.04.2017. The maternity leave applied by the workman was submitted to the management No.1 for seeking her replacement in view of nature of the workman, she was performing. Consequently, the management No.1 provides the substitute in place of the workman. After replacement of the workman, it was for the management No.1 to take further action on the fitness certificate so provided by the workman. The management has however no role in allowing rejoining or otherwise of the workman. It is quite wrong to allege that answering managements did not allow the workman her job even after giving fitness certificate. The answering managements did not terminate the services of the workman. Filing of demand notice by the workman is a matter of record. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs.

7. The workman filed replication to the written statement of management No.1 and separate replication to the joint written statement of management No.2 to 4, wherein the contents of respective written statements except admitted facts, are denied as wrong and averments of the statement of claim are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 18.08.2021 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management and workman ? OPMs
3. Relief.

9. In evidence, the workman Jyoti Rani examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W4'.

Exhibit 'W1' is original out-patient card relating to Jyoti Rani, Govt. Multi-Specialty Hospital, Sector 16, Chandigarh & Allied Dispensaries incorporating EDD (expected due date of delivery) 29.07.2019.

Exhibit 'W2' is copy of demand notice dated 03.02.2020 raised by the workman against managements No.1 to 4 through Legal Representative Shri S. K. Khurcha.

Exhibit 'W3' is copy of medical fitness of workman issued by ESI, Medical Officer on 06.01.2020 mentioning therein w.e.f. 06.01.2020 fit to resume work from tomorrow.

Exhibit 'W4' is the failure report of Assistant Labour Commissioner, U.T. Chandigarh bearing Memo No.3022 dated 26.08.2020.

10. Workman closed evidence in affirmative on 22.05.2023. At the stage of remaining evidence of the workman, at the stage of filing reply to the written application to produce the record, due to non-appearance management No.1 was proceeded against ex-parte vide order dated 27.03.2023.

11. On the other hand, managements No.2 to 4 examined MW1 Sukhwinder Singh - Liaison Officer, Markfed, O/o Punjab State Co-operative Supply & Marketing Federation Limited, Markfed House, Chandigarh who tendered his affidavit Exhibit 'MW1/A'. Managements No.2 to 4 also examined MW2 Amandeep Singh - Assistant Liaison Officer, Markfed, Chandigarh who tendered his affidavit Exhibit 'MW2/A'.

12. On 15.05.2024 Learned Representative for the managements No.2 to 4 closed oral evidence.

13. At the stage of remaining documentary evidence of managements No.2 to 4, workman moved an application for leading additional evidence which was allowed vide order dated 11.11.2024. In additional evidence workman examined AW2 Rajesh - Assistant Manager, M/s Innovision Pvt. Ltd., who brought summoned record Mark 'AW2/1' to Mark 'AW2/5'.

Mark 'AW2/1' is copy of letter dated 26.10.2016 issued by Chief Manager (FG) Markfed regarding allotment of contract to M/s Innovision Ltd.

Mark 'AW2/2' is copy of agreement dated 26.10.2016 executed between Markfed & M/s Innovision Ltd.

Mark 'AW2/3' (colly.) is computer generated copy of muster roll for the month of April 2017 to July 2019 of Innovision Ltd. relating to the employees deputed in the establishment of Markfed, Chandigarh.

Mark 'AW2/4' is copy of muster roll register maintained by Innovision Ltd. for the period August 2019.

Mark 'AW2/5' is copy of record of payment of wages of the contractual employees deputed by Innovision Ltd. to the location Markfed, Chandigarh for the period April 2017 to July 2019.

14. On 20.01.2025 Learned Representative for the workman closed additional evidence. The managements No.2 to 4 were provided an opportunity to lead evidence in rebuttal to additional evidence of workman. On 03.02.2025, Learned representative for the managements No.2 to 4 closed evidence in rebuttal to additional evidence of the workman.

15. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :-

Issue No. 1 & 2 :

16. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the managements.

17. In support of claim statement, workman Jyoti Rani examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. AW1 supported his oral version with the documents Exhibit 'W1' to Exhibit 'W4'. Learned Representative for the workman referred the documents Mark 'AW2/1' to Mark 'AW2/5' got produced on record by the workman from summoned witness through AW2 Rajesh - Assistant Manager, Office of M/s Innovision Pvt. Ltd.

18. On the other hand, Learned Representatives of managements No.2 to 4 referred testimony of MW1 Sukhwinder Singh - Liaison Officer of Markfed and MW2 Amandeep Singh - Assistant Liaison Officer of Markfed who vide their respective affidavits Exhibit 'MW1/A' and Exhibit 'MW2/A' in verbatim to each other deposed that the workman was engaged through the service provider (management No.1) and joined on 17.04.2017. The maternity leave applied on 13.07.2019 by the workman was submitted to management No.1 seeking her replacement in view of the nature of work she was performing. Consequently, management No.1 provided a substitute in place of the aforesaid workman. The services of the workman were engaged through service provider M/s Innovision Pvt. Limited - management No.1. Since the services of the workman were engaged through a service provider, managements No.2 to 4 are not the employer as far as workman is concerned. Action whatsoever regarding replacing the services of the workman or otherwise is to be taken by management No.1. After the replacement of the workman, it was for the management No.1 to take further action on the fitness certificate so produced by the workman. Since further action after medical fitness certificate was required to be taken by management No.1, thus, management Nos.2 to 4 could not go beyond the directions, if any, issued by management No.1. Management No.2 did not terminate the services of the workman. However, on proceeding the workman on medical leave, a substitute in her place was sought which was provided by management No.1. The workman had to proceed on maternity leave and as such, a replacement in her place was sought from management No.1, which he provided. So, it was for the management No.1 to deploy the workman on her joining after availing the maternity leave. The claim against managements No.2 to 4 is, therefore, not maintainable. Action whatsoever was required to be taken by management No.1 who was the service provider. Notwithstanding this, the services of the workman cannot be said to be terminated by managements No.2 to 4.

19. From the oral as well as documentary evidence led by the parties, it comes out that workman has alleged that she is working with managements (Nos. 1 to 4) since 17.04.2017 and that her services were terminated illegally by the managements without giving notice. Neither in demand notice Exhibit 'W2' nor in the claim statement nor in affidavit Exhibit 'AW1/A', workman clearly mentioned as to who out of managements No.1 to 4 engaged her in service. It is also not clearly mentioned as to who out of managements No.1 to 4 terminated her services. As pleaded in the claim statement and deposed in affidavit Exhibit 'AW1/1' the workman remained working with the managements from 17.04.2017 and her services were terminated by the managements. The specific date of termination of service is also not mentioned, however it is alleged that after availing the maternity leave (maternity leave of 26 weeks applied on 13.07.2019) when she presented her medical fitness, the management did not allow her to join duty. However, workman / AW1 when put to cross-examination by management No.1 admitted as correct that no appointment letter was issued to her by management No.1 but Markfed i.e. managements No.2 to 4 have given her letter of the appointment of Stenographer. AW1 further stated that she joined her duties directly with managements No.2 to 4. AW1 when put to cross-examination by management No.2 to 4 stated that management No.1 i.e. Innovision Pvt. Ltd. is the service provider. She was not deputed by the service provider. AW1 denied the suggestion as wrong that management No.1 is her employer. AW1 in her cross-examination conducted by management No.2 to 4 further voluntarily stated that she was interviewed by the Markfed / management No.2, thus according to her management No.2 is her employer. She does not remember the exact date when she was interviewed by management No.2. AW1 denied the suggestion as wrong that no interview was conducted and her services were provided to the Markfed by the management No.1. AW1 further denied the suggestion as wrong that she was deputed by the service provider / management No.1. To my opinion, the version of AW1 that she was issued appointment letter by managements No.2 to 4 does not stand proved as no such appointment allegedly issued by managements

No.2 to 4 to the workman is produced on record by the workman. It is undeniable fact that workman joined the services on 17.04.2017. Management No.1 in its written statement denied relationship of employer-employee between management No.1 and workman on the ground that management No.1 was assigned a contract / agreement by management No.2 for the supply of the outsource workmen vide contract dated 30.10.2017. Learned Representative for the workman contended that the aforesaid plea of management No.1 is taken as correct then it would prove that workman joined services on 17.04.2017 i.e. much prior to awarding contract by management No.2 to management No.1. Thus, workman is the employee of management No.2. To my opinion, the facts pleaded by the management No.1 in the written statement does not stand proved for the reasons; first that the verification clause of written statement is not signed by anyone. Secondly, no one on behalf of management No.1 stepped into the witness box as witness to prove the facts pleaded in its written statement. Thirdly, workman in additional evidence summoned official of management No.1 and in pursuance of summons Rajesh - Assistant Manager of management No.1 appeared and examined as AW2 who brought on record document Mark 'AW2/1' to Mark 'AW2/5'. Mark 'AW2/1' is the copy of letter dated 26.10.2016 issued by Chief Manager (FG), Markfed regarding allotment of contract to M/s Innovision Ltd. for providing services for watch & ward of Markfed stocks stored at Storage Complexes and for providing other services at Markfed, Head Office, District Offices, and plants / units other than security services w.e.f. 01.11.2016. The aforesaid document falsifies the plea of management No.1 that it was awarded the service contract w.e.f. 30.10.2017. From Mark 'AW2/1' got proved on record by the workman herself, it is established that management No.1 is awarded service contract by the Markfed w.e.f. 01.11.2016, which support the plea of managements No.2 to 4 that workman was outsource employee engaged by service provider M/s Innovision Ltd. - management No.1 and deployed in management No.2. Further the copy of muster roll Mark 'AW2/3' got produced by workman from AW2, it is further established that the name of the workman is mentioned in the muster roll of Innovision Ltd. at serial No.11 for the period w.e.f. April, 2017 to July 2019. From the attendance register Mark 'MW2/4' got produced into evidence by the workman from AW2, it is further established from the attendance record of the workman was maintained by the service provider M/s Innovision Ltd. From Mark 'AW2/5' got produced on record by the workman from AW2, it is further established that the workman was paid monthly wages after deduction of EPF and ESI contribution by the service provider M/s Innovision Limited for the period April, 2017 to July, 2019. Thus, the service provider - management No.1 is the pay master of the workman. The absence of individual contract between the workman and service provider M/s Innovision Limited in no manner would imply that the workman is the employee of management No.2. There is no document on record showing that workman ever raised any objection to payment of her monthly wages by the service provider M/s Innovision Ltd. - management No.1. The workman was covered under the EPF & ESI scheme by the service provider management No.1. Thus, it is service provider - management No.1 who is the employer of the workman and workman has no direct relationship of employer-employee with managements No. 2 to 4. The managements No.2 to 4 are well within their rights to seek replacement of the outsource employee-workman during the period she proceeded on maternity leave and it is for the service provider - management No.1 to see her rejoining, when after availing maternity leave, the workman approached for rejoining on the basis of medical fitness. Workman / AW1 when put to cross-examination stated that she approached managements No.1 & 2 for allowing her to join duty after the maternity leave but she was not allowed to join duty. AW1 further stated that management No.1 told her join in Markfed as it has no concern with her service or joining. She did not give any written intimation to the Markfed that management No.1 instructed her to approach the Markfed. The aforesaid version of AW1 would prove that on refusal of management No.1 to allow her to join duty, since did not bring it to the notice of Markfed. Even otherwise, service provider - management No.1 being employer is responsible for rejoining of the workman. Under the Maternity Benefit Act, 1961, every woman is entitled to get maternity benefit and employer must pay them at the average daily wage for the period of her actual absence immediately preceding and including the day of the delivery. Women are entitled to maximum of 26 weeks of maternity leave benefit with up to 8 weeks before the expected delivery. Period of maternity leave is to be treated on duty. In this case, workman proceeded on maternity leave on 13.07.2019 and obtained medical fitness on 06.01.2020 for joining duty next day. Service provider - management No.1 did not allow her to join duty w.e.f. 07.01.2020. Verbal refusal to join duty

amount to termination of service. Workman is proved to have remained in continuous employment of management No.1 w.e.f. 17.04.2017 till 06.01.2020, thus, she fulfils the requirement of continuous service as defined under Section 25B of the ID Act. Once the requirement of Section 25B of the ID Act is fulfilled, the provisions of Section 25F of the ID Act is allowed which lays down certain conditions :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

20. In the present case, before terminating the services of the workman the employer-management No.1 neither issued any prior notice nor paid notice pay in lieu of notice period nor paid retrenchment compensation at the time of retrenchment of service. Thus, management No.1 is guilty of violation of Section 25F of the ID Act.

21. Keeping in view the length of service from 17.04.2017 to 06.10.2019, last paid monthly wages ` 21,863/- per month, the workman is held entitled to lump sum compensation of ` 55,000/-.

22. Accordingly, issue No.1 is decided in favour of the workman and against the management No.1. Issue No.2 is decided in favour of managements No.2 to 4 and against the workman.

Relief :

23. In the view of foregoing finding on the issue No.1 above, this industrial dispute is allowed qua management No.1 to the extent that the workman is held entitled to lump sum compensation of ` 55,000/-. Management No.1 directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the above said amount from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 11.02.2025.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd April, 2025

No. 505037-HII(2)-2025/5294.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **47/2019** dated **14.02.2025** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SHASHI BHUSHAN, AGED ABOUT 40 YEARS, S/O LATE SH. KAMAL KUMAR R/O HOUSE NO. 560/1, SECTOR 41-A, CHANDIGARH - 160036. (WORKMAN)

AND

1. EQUITAS SMALL FINANCE BANK LTD., 4TH FLOOR, SPENCER PLAZA, NO. 769, PHASE - II, ANNA SALAI, CHENNAI - 600002 THROUGH MANAGING DIRECTOR SHRI P.N. VASUDEVAN.
2. SH. MANISH DUTT KAUSHIK BUSINESS H.R., EQUITAS SMALL FINANCE BANK LTD., OFFICE NO. 507-509, 5TH FLOOR, TOWER A, UNITECH BUSINESS PARK, SOUGHT CITY - 1, NEAR HUDA CITY CENTRE METRO STATION, GURUGRAM - 122001.
3. SH. MUNISH KUMAR, BRANCH MANAGER, EQUITAS SMALL FINANCE BANK LTD., SCO 2421 - 22, SECTOR 22-C, CHANDIGARH - 160022.
4. SH. NARINDER CHAUDHARY, SALES MANAGER (BDM), EQUITAS SMALL FINANCE BANK LTD., SCO 2421-22, SECTOR 22-C, CHANDIGARH - 160022. (MANAGEMENT)

AWARD:-

1. Shashi Bhushan, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman is resident of House No.560/1, Sector 41-A, Chandigarh. In May 2017, workman applied for the post of Manager in respondent bank (*here-in-after 'management'*) i.e. Equitas Small Finance Bank Ltd. The workman was called for an interview on 06.06.2017. Thereafter, being eligible and competent, the workman was offered a job by Branch Manager (*here-in management No.3*) of management Bank on the same day i.e. 06.06.2017 with monthly salary of ₹ 21,599/- per month. Workman joined the job on 08.06.2017 as Assistant Manager (Sales) with the management-Bank at Chandigarh Branch. Since the joining of the above said post, workman was doing his job sincerely and performed his duties with best of his ability. The work and conduct of the workman were satisfactory and there was no complaint whatsoever against him. Due to the personal grudge and enmity, Narinder Chaudhary - Sales Manager, (*here-in management No.4*) and Arpit Sharma the then Cluster Head had given a false report to Sh. Manish Dutt Kaushik - Business HR (*here-in management No.2*) against the workman. Due to personal grudge and enmity, suddenly on 20.12.2017, said Sales Manager verbally told the

workman that he has been transferred from Chandigarh to Bathinda and his transfer order has been issued. Due to this workman approached his senior officials in the Branch and asked the reason for his transfer and also told them the order issued on very short notice but they did not give any satisfactory reply to him. Thereafter, the workman approached the managements No.1 to 3 via e-mail dated 24.12.2017 and explained his situation that he is unable to join the job at Bathinda Branch, due to ill health of his wife as she was pregnant and she is also a patient of hyper-tension and he is the only person in the family who can look after her. In the said period the workman was regularly going to Chandigarh Branch and was doing his work but the said Sales Manager changed his reporting authority i.e. mapping regarding his attendance from Chandigarh to Bathinda, without the knowledge of the workman and without informing him with prior notice, due to which the workman was unable to mark his presence in Chandigarh Branch. In this regard, reply was given by the Sales Manager of Bathinda Branch, wherein he stated in an e-mail on 27.12.2017 that the matter is not in his hand and he also threatened the workman that 'if you continuously remained absent in Bathinda Branch, you will be absconded'. The workman had not received any satisfactory reply from managements No.1 to 3 for the said e-mail. Thereafter, the workman sent reminder via e-mail dated 03.01.2018 stating his problem against with condition of his wife and requesting to revoke the transfer and the harassment he is facing due to said transfer. On 04.01.2018, H.R Head (management No.2) replied to the previous e-mail stating that 'please share the supporting documents pertaining to your wife health', then workman shared all the documents i.e. report of hospital on the very same date via e-mail to the H.R., after that there was no response from the H.R of the management Bank. Meanwhile the workman gave many reminder mails to the H.R. requesting to revoke his transfer. On 19.01.2018 workman received a reply from the H.R. in which he stated that 'due to high business demand you are requested to move to your new Branch i.e. Bathinda, your request for revoking the transfer stands cancel'. Meanwhile the workman faced mental torture and harassment in the office. On next day, dated 20.01.2018, the workman requested the H.R. via e-mail that to give him 4-5 months to work in the same Branch of the Bank i.e. Chandigarh, most probably till the day of delivery of his wife and assure if the higher authority will ask for transfer, then he will join the new branch after delivery of his wife. The H.R. did not reply to the last e-mail and the workman gave the reminder mails to the Head H.R. of the Bank. Workman was not paid salary for 2 months i.e. January and February. The workman approached his reporting Manager - Narinder Chaudhary, who told him that due to issue of his transfer, his attendance was not marked for that period and his attendance will be marked from Bathinda Branch only, and the salary has not been sent to them, for further enquiry to approach the Head H. R. directly, as he is not answerable to him. The workman on 16.02.2018 e-mailed to the Head H.R. about the issue related to his salary not being paid to him, due to which workman was regularly facing problems, as he is the only one to take care of his pregnant wife, financially as well as economically. On 05.03.2018 the Head H.R. asked the workman to send the snapshots of his attendance sheet to him and promised he will be paid for the days he has worked. The workman sent the snapshots of the attendance sheet to the Head H.R. The presence of the workman was not marked from 22.12.2017 to 08.02.2018. H.R. Head informed the workman that his mapping/attendance got reinstate to his home Branch i.e. Chandigarh Branch. Hence, the workman's presence got marked from 09.02.2018 onwards from Chandigarh Branch itself. But the management did not release the salary of the workman for the period in which his attendance was not marked in the attendance system. The management did not release his salary for January, 2018 and February, 2018, after reinstating his mapping/attendance at his home branch and marked his presence regularly. In between, the workman was being threatened by the then Sales Manager Narinder Chaudhary to terminate from job, for which the workman complained to the Head H.R. and senior officials about it. The workman wrote to the Head H.R. about it on 20.07.2018, explaining the harassment and threatening him to terminate from the said job and no further action was taken upon his complaint as well also issue regarding release of his salary. On 13.08.2018, an email has received from the Head H.R. of the Bank to the workman stating that the workman has been relieved from service of the Bank on the closing hours of 14.08.2018, as he failed to report to the

transferred Branch and during January and February, 2018, they did not pay his salary, as he was absent from the transferred Branch. It is further averred that workman was terminated without giving a prior notice of 30 days and salary of notice period and also was not paid his wages for the work of earlier two months. Management has not released the salary for the period 01.08.2018 to 14.08.2018 and other benefit of service. The workman is the victim of grudge and enmity in the office. Then workman on 08.10.2018 approached the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh through demand notice dated 04.10.2018, the management bank appeared but had not given satisfactory reply. The matter has not been amicably settled during the course of conciliation proceedings. The Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh advised the workman to approach the appropriate forum. Prayer is made that workman may be reinstated in service immediately with full back wages, along with continuity of service and all the consequential benefit along with salary of one month notice period.

3. On notice, managements No.1 to 4 contested the claim statement by filing joint written statement wherein it is submitted that Sh. Rohit Saini, Area Legal Manager is well conversant with the facts of the case and is authorized to file reply on behalf of the management. Further preliminary objections are raised on the ground that applicant (*here-in 'workman'*) does not fall within the definition of 'workman'. Besides the applicant has no cause of action.

4. Further on merits, it is stated that the applicant at the time of joining was apprised of the fact that he can be transferred at any point of time to any other place, where the management has a branch due to the business demand. It is only as per the high business demand that the applicant was transferred from Chandigarh to Bathinda Branch. The contents of Para 3, 5, 6 and 12 are admitted as matter of record. It is denied as wrong that the applicant faced mental torture. It is stated that applicant did not join the Bathinda Branch on transfer having the knowledge that his request for revoking his transfer has been cancelled. Later on, the applicant cannot claim salary for the period during which he remained absent. Applicant did not join the duties at Bathinda as per the requirements of the business, then his absence was treated as loss of pay and he is not entitled to claim salary for the month of January and February, 2018. Applicant is not entitled for any compensation or salary for the above-said period as he remained absent for the above-mentioned period. Applicant has no cause of action. Para 17 and 18 of the claim statement are denied for want of knowledge and prayer is made that the claim statement may be dismissed.

5. Workman filed rejoinder dated 20.05.2022 (filed on 19.07.2022), wherein the contents of the written statement except the admitted facts are denied as wrong and false and averments of the claim statement are reiterated.

6. From the pleadings of parties following issues were framed vide order dated 19.07.2022.

1. Whether the services of the workman were terminated illegally ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled for reinstatement with continuity of service, with full back wages and consequential benefits, as prayed for? OPW
3. Whether the workman has no cause of action? OPW
4. Relief

7. In evidence workman Shashi Bhushan examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1/1' to Exhibit 'W1/6'.

Exhibit 'W1/1' is offer letter dated 06.06.2017 received through email letter dated 06.06.2017

Exhibit 'W1/2' is joining letter dated 08.06.2017 through email dated 08.06.2017.

Exhibit 'W1/3' is request of workman vide e-mail dated 24.12.2017.

Exhibit 'W1/4' is further correspondence of the workman regarding mapping/attendance to get himself reinstated (consisting of page No. 1 to 12).

Exhibit 'W1/5' is correspondence between the workman and the management regarding relieving of the workman from the Home Branch and his failure to join new place of posting at Bathinda.

Exhibit 'W1/6' is failure report dated 23.10.2019 of the Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

Exhibit 'W1/7' is certificate under Section 65-B of the Indian Evidence Act in support of e-mails Exhibit 'W1/1' to Exhibit 'W1/5'.

8. On 20.03.2024 workman closed his evidence in affirmative.

9. On the other hand, management examined MW1 Rohit Kumar Mittal who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to Exhibit 'M8'.

Exhibit 'M1' is authority letter dated 14.05.2024 issued by Senior Vice President Legal in favour of Rohit Kumar.

Exhibit 'M2' is board resolution dated 29.09.2023.

Exhibit 'M3' is offer letter dated 12.05.2017.

Exhibit 'M4' & Exhibit 'M5' are details of full & final settlement for the month of August, 2018 and September, 2018.

Exhibit 'M6' & Exhibit 'M7' are hardcopy of e-mail dated 20.01.2018 and 05.02.2018.

Exhibit 'M8' is certificate under Section 63 of BSA.

Mark 'X' & Mark 'Y' are hardcopies of e-mail dated 20.01.2018 and 05.02.2018.

10. It is pertinent to mention here that in cross-examination of MW1, management brought on record document **Exhibit 'M9'** i.e. Performance Enhancement Plan (PEP) of workman and **Exhibit 'M10'** i.e. reply dated 25.10.2018 to the demand notice dated 23.10.2018 filed by the management in proceedings before Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh.

11. On 23.12.2024 Learned Representative for the management closed oral evidence and on 14.02.2025 closed documentary evidence.

12. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below;

Issues No. 1 & 2 :

13. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion. Onus to prove both these issues is on the workman.

14. Under these issues, workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1/1' to Exhibit 'W1/5'.

15. On the other hand, management examined MW1 Rohit Kumar Mittal - Regional Manager Branch Operation, Equitas Small Finance Bank Ltd, who vide his affidavit Exhibit 'MW1/A' deposed the entire material contents of written statement which are not reproduced here in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'M1' to Exhibit 'M10' and Mark 'X' & Mark 'Y'.

16. From the oral as well as documentary evidence led by the parties, it comes out that management has issued offer letter dated 06.06.2017 / Exhibit 'W1/1' to the workman to join on the post of Assistant Manager (Sales) and workman accepted the offer vide acceptance letter dated 12.05.2017 / Exhibit 'M3'. MW1 when put to cross-examination stated that as per offer letter Exhibit 'M3', the designation of the workman was of Assistant Manager (Sales). The workman in para 2 of the claim statement alleged that on 20.12.2017 the Sales Manager verbally informed him that he has been transferred from Chandigarh to Bathinda. Since the workman has due intimation that he has been transferred from Chandigarh to Bathinda, thus contention raised by Learned Representative for the workman that workman has not received any e-mail or written intimation regarding his transfer from Chandigarh to Bathinda is insignificant. Moreover, it is own case of the workman that he approached the management to get revoked his transfer order via e-mail dated 24.12.2017 / Exhibit 'W1/3'. It is own case of the workman that on 19.01.2018, he received a reply from the H.R. of the management Bank that due to high business demand the workman is requested to move to his new Branch i.e. Bathinda, and his request for revoking the transfer stands cancelled. Thereafter, again the workman sought more time to join at Bathinda Branch through e-mail dated 20.01.2018. There is no communication / document showing that workman's request for seeking more time of about 4-5 months to join at Bathinda Branch was accepted. Due to non-joining of the workman despite transfer order communicated to him on 20.12.2017, the workman was relieved from service on the closing hours of 14.08.2018. On account of his transfer from Chandigarh to Bathinda Branch, the management is justified in changing his reporting authority regarding his attendance from Chandigarh to Bathinda. Thereafter, on workman's request on 09.02.2018, his attendance was re-instated from home Branch Chandigarh but his transfer order was not revoked. As per acceptance letter dated 12.05.2017 / Exhibit 'M3' to the offer letter, workman has agreed to the terms and conditions of his employment. In letter / Exhibit 'M3', it has specifically mentioned that this job is transferable at the discretion of the management to any place in country. Workman / AW1 when put to cross-examination admitted as correct that he was apprised of the fact that he can be transferred at any point of time to other place due to the business demand. AW1 in his cross-examination further admitted as correct that he has not reported to the Bathinda branch after transfer order. To my opinion, as per acceptance letter / Exhibit 'M3', the incident of transfer is inherent in the terms of service and it was within the knowledge of the workman from the very beginning of joining service on 08.06.2017. On communication of transfer order dated 20.12.2017 from Chandigarh to Bathinda Branch, the workman had no right to refuse to join the new place of posting. The contention raised by Learned Representative for the workman that the order of transfer dated 20.12.2017 is arbitrary and malafide is devoid of merits as there is only bald allegation of the workman that he has been victimized on account of personal grudge or enmity of managements No.2 to 4 with him. The workman did not lead any evidence to substantiate the above allegation. The workman did not place on record the alleged false report against him allegedly made by Narinder Chaudhary - Sales Manager and Arpit Sharma the then Cluster Head to Sh. Manish Dutt Kaushik - Business HR.

17. Employee's transfer in transferable service is necessary incident of service carrier. It is own case of the workman that his request to revoke the transfer has been denied on the ground that due to high

business demand he is required to move to his new Branch at Bathinda. Thus, workman himself is guilty of refuting the transfer order, against the terms and conditions of his employment. After transfer on 20.12.2017, the workman had no right to continue to perform duty at Chandigarh. AW1 in his cross-examination admitted as correct that he had been voluntarily doing the work at Chandigarh branch even after informed by the management that he has been transferred to Bathinda Branch. In case the workman despite being transferred to Bathinda Branch, kept performing duty voluntarily at Chandigarh Branch, he is not entitled to any salary for performing un-authorised duty. MW1 in his cross-examination stated that full and final settlement amount was paid through bank transaction and this fact has not been controverted by the workman in cross-examination of MW1.

18. In view of the discussion above, the management is justified in relieving the workman from duty on 14.08.2018, when the workman failed to report at new location at Bathinda Branch for a period of about more than 7 months from the date of transfer order dated 20.12.2017. To the facts and circumstances the provisions of Section 25F of ID Act is not attracted.

19. Accordingly, issue No.1 & 2 are decided against the workman and in favour of the management.

Issue No. 3 :

20. Onus to prove this issue is on the management.

21. During course of arguments, this issue has not been pressed by Learned Representative for the management.

22. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

23. In the view of foregoing finding on the issues No. 1 & 2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Dated : 14.02.2025.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Om Kumar S/o Santosh D. Bichukle R/o 1764, Manimajra, Chandigarh, have changed my name to Om Santosh Bichukle S/o Santosh Dhondiram Bichukle.

[559-1]

I, Rama Chandran S/o Durai Swami R/o 3243, Sector 38-D, Chandigarh, have declare that I have changed my name from Rama Chandran to D. Rama Chandran.

[560-1]

I, Poonam Parjapati W/o Shambhu Prajapati R/o House No. 237, Village Kajheri, Chandigarh, have changed my name from Poonam Parjapati to Poonam Prajapati.

[561-1]

I, Sachin S/o Surender Kumar # 214, GF, Sector 20-A, Chandigarh, have changed my nmae to Sachin Kumar.

[562-1]

I, Veena W/o Sachin Kumar # 214, GF, Sector 20-A, Chandigarh, have changed my name to Veena Kumari.

[563-1]

I, Balbir Singh Sandhu S/o Sohan Singh R/o # 1256, Ground Floor, Sector 43-B, Chandigarh, have changed my name to Balbir Singh.

[564-1]

I, Gouri Mahajan W/o Atul Mahajan # 1572, Sector 33-D, Chandigarh, have changed my name to Prerna Mahajan.

[565-1]

I, Rekha W/o Anshul Verma R/o 2616, Sector 47-C, Chandigarh, have changed my name to Reema Verma.

[566-1]

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